IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1771 OF 2005

M/s.M.S.Patel & Co.)..Petitioner

Versus

Shri Lal Bhagwandas Tolani & Anr.)..Respondents

Mr.R.V. Pai i/b.Sanjay Udeshi for the Petitioner.

Mr.V.N. Tayade for Respondent No.1.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH SEPTEMBER 2005

P.C.:

. This Petition challenges the order of the Labour Court passed under Section 33-C(2) of the Industrial Disputes Act, 1947. The Labour Court has allowed the application partly and has directed the Petitioner to pay Rs.16,531/- as notice pay and Rs.46,935.58/- towards retrenchment compensation alongwith interest.

2. This order has been challenged on the ground that Respondent No.1 was not able to establish that he was a workman under Section 2(s) of the Industrial Disputes Act, 1947. It is contended that the Petitioner had executed a Power of Attorney in favour of Respondent No.1 authorising him inter alia to appoint or dismiss employees. It is then contended that admittedly

Respondent No.1 was not a member of the Union functioning in the establishment. All these factors, according to the learned Advocate for the Petitioner, indicate that Respondent No.1 was not a "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947 and, therefore, an application under Section 33(C)(2) is not maintainable. He relies on the judgment of the Apex Court in the case of *Management of Sonepat Co-operative Sugar Mills Ltd.* vs. *Ajit Singh*, **2005 I LLJ 266** and of the learned Single Judge of this Court in *Shri Y.J.Patki, Proprietor of M/s.Patki & Dadarkar* vs. *Prabhakar G.Kolhatkar and another* in **Writ Petition No.1686 of 1996 dated 25th August 2005** in support of his submission.

3. A perusal of the order of the Labour Court indicates that Respondent No.1 was working as an Accountant and was checking the accounts. This would definitely fall within the meaning of clerical work. The authorisations under the Power of Attorney issued to him were never exercised by him as seen from the evidence and in such circumstances the submissions made on behalf of the Petitioner are without any merit. There is evidence on record to indicate that Respondent No.1 was doing clerical work although labelled as an Accountant. I see no reason to interfere. Hence, Petition rejected.